

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BEFORE: JAMES M. WICKS, U.S. MAGISTRATE JUDGE

DATE: 2/23/2022

TIME: 2:00 PM

☐ SEALED PROCEEDING

CIVIL CAUSE FOR MOTION HEARING

CASE: 2:20-cv-02169-JS-JMW, Tolani v. Carl C. Burnett Funeral Home, Inc.

APPEARANCES:

For Plaintiff: Caner Demirayak

For Defendant: Miriam J. Manber

Court Reporter/FTR: 2:02-2:38 (video)

THE FOLLOWING RULINGS WERE MADE:

- ☒ Oral Argument held regarding (DE#45) MOTION to Stay Discovery Pending Adjudication of Defendant's Motion to Dismiss [40]. Parties' arguments were heard. Defendant's motion was granted in part and denied in part, for the reasons set forth on the record:

In evaluating whether a stay of discovery pending resolution of a motion to dismiss is appropriate, courts typically consider: "(1) whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay." *Chesney v. Valley Stream Union Free Sch. Dist. No. 24*, 236 F.R.D. 113, 115 (E.D.N.Y. 2006); *see also Hachette Distrib., Inc. v. Hudson Cnty. News Co., Inc.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1999). "Courts also may take into consideration the nature and complexity of the action, whether some or all of the defendants have joined in the request for a stay, and the posture or stage of the litigation." *Chesney*, at 115. (citation omitted). Here, the Court finds that Defendant's motion to dismiss makes a strong showing that the majority of Plaintiff's claims appear to be unmeritorious, and it is unlikely that leave to replead would be granted as the Complaint has been amended twice before (*see* DE 22; DE 30). Further, the likelihood of prejudice to Plaintiff in granting the stay in part would be minimal, and the burden on the parties of responding to limited discovery would be nominal. However, the possibility does exist that even if this Court grants the motion to dismiss, there could in theory be claims remaining that might be pursued in state court. Accordingly, all discovery is hereby stayed pending determination of the motion to dismiss, *except* with respect to the following:

- ☒ Defendant shall produce records from 2016 through Plaintiff's alleged termination, related to the wages, salary, payroll records, and any policies, procedures, and/or workplace rules and/or handbooks in effect during any time Plaintiff was employed by Defendant. Plaintiff shall produce to Defendant all documents relating to claimed unpaid wages.

A Status Conference will be scheduled pending the Honorable Joanna Seybert's decision on Defendant's motion to dismiss, at which time a further discovery schedule will be adopted if any claims remain.

SO ORDERED

/s/James M. Wicks

JAMES M. WICKS

United States Magistrate Judge